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NEW JERSEY APPLESEED
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.

PLANEWARK, BUTTON FACTORY
CONDOMINIUM ASSOCIATION, INC.,
ALEIX MARTINEZ, MADELINE RUIZ,
LISA SANDERS,

Plaintiffs,

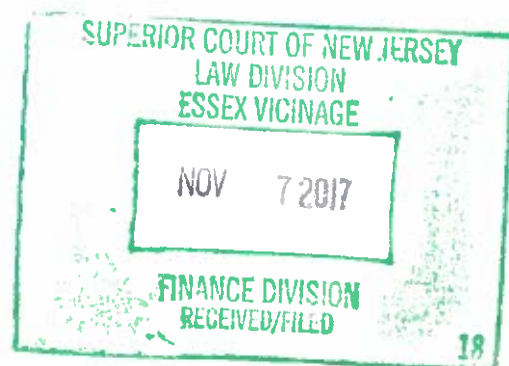
v.

MUNICIPAL COUNCIL OF THE CITY
OF NEWARK, NEWARK CENTRAL PLANNING
BOARD, KENNETH LOUIS, in his
official Capacity as City Clerk
of the City of Newark,

Defendants.

CIVIL ACTION

COMPLAINT IN LIEU OF
PREROGATIVE WRITS



Plaintiffs, PLANewark, Button Factory Condominium
Association, Inc., Aleix Martinez, Madeline Ruiz, and Lisa
Sanders ("Plaintiffs") by way of Complaint in lieu of
Prerogative Writs against the Defendants, allege as follows:

NATURE OF ACTION

This is an action in lieu of prerogative writs challenging the validity of Ordinance 17-1437 entitled "Ordinance of the Municipal Council of the City of Newark Amending the City of Newark Zoning Ordinance, Title XLI, Chapters 1 Through 5 of the Municipal Code, to Create an MX-3 Zone," which was adopted by the Municipal Council of the City of Newark on October 4, 2017, and published in the Star Ledger on October 13, 2017.

PARTIES

1. All Plaintiffs, except PLANewark and Madeline Ruiz, are owners of real property located within 200 feet in all directions of the new boundaries created by Ordinance 17-1437 who were not provided with notice by the City Clerk at least 10 days prior to the October 4, 2017 public hearing as required by N.J.S.A. 40:55D-62.1.

2. PLANewark is an unincorporated association of local residents, architects, planners, attorneys, and other professionals living in Newark who are committed to equitable and sustainable environment, land use, and transportation planning practices in all neighborhoods throughout the City. Members of PLANewark have participated in the local planning process relevant to this action and are advocates for development in accordance with the current Master Plan. A number

of PLANewark's members live within the MX-3 zone created by Ordinance 17-1437 or within 200 feet of same.

3. The Button Factory Condominium Association, Inc. is a condominium association incorporated under the New Jersey Condominium Act, P.L.1969, c.257 (C.46:8B-1 et seq.) and is comprised of 16 units governing the real property designated as Block 195.01, Lots 1-16 on the Tax Map of the City of Newark, more commonly known as 61 New Jersey Railroad ("NJRR") Avenue, Newark, New Jersey.

4. Aleix Martinez is the owner of real property designated as Block 195.01, Lot 3, Qualifier C3 on the Tax Map of the City of Newark, more commonly known as 61 NJRR Avenue, Unit #3, Newark, New Jersey. He is a trustee on the Board of the Button Factory Condominium Association, Inc.

5. Madeline Ruiz is the owner of real property designated as Block 197, Lot 28 on the Tax Map of the City of Newark, more commonly known as 74 Bruen Street, Newark, New Jersey. She is also a member of PLANewark.

6. Lisa Sanders is the owner of real property designated as Block 195.01, Lot 11, Qualifier C11 on the Tax Map of the City of Newark, more commonly known as 61 NJRR Avenue, Unit #11 Newark, New Jersey. She is the President of the Button Factory Condominium Association, Inc. and is a member of PLANewark.

7. The Municipal Council of the City of Newark ("Council") is the governing body of the City of Newark with its principal office located at 920 Broad Street, Newark, New Jersey in the County of Essex, State of New Jersey. The Council is responsible for the adoption of land use ordinances.

8. Defendant Newark Central Planning Board ("Planning Board") is a municipal agency established pursuant to the Municipal Land Use Law ("MLUL") and is vested with the responsibility to review any proposed zoning ordinance or amendment thereto pursuant to N.J.S.A. 40:55D-64 and N.J.S.A. 40:55D-26.

9. Defendant Kenneth Louis is the Clerk of the City of Newark. In that official capacity, he is responsible for providing notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district to all the owners of real property located within 200 feet in all directions of the new boundaries created by the ordinance as required by N.J.S.A. 40:55D-62.1.

COUNT I

CHALLENGE TO THE VALIDITY OF ORDINANCE 17-1437 BASED ON ITS
INCONSISTENCY WITH THE 2012 MASTER PLAN

10. Plaintiffs repeat and restate the statements contained in paragraphs 1-9 as if set forth verbatim and at length herein.

11. N.J.S.A. 40:55D-62a requires that all zoning ordinances and zoning ordinance amendments be substantially consistent with the Land Use Element of the Master Plan or are designed to effectuate such Plan elements. The "governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element . . . but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance."

12. N.J.S.A. 40:55D-16 of the MLUL further provides that "[a] zoning ordinance or amendment or revision thereto which in whole or in part is inconsistent with or not designed to effectuate the land use plan element of the master plan shall not take effect until a copy of the resolution required by subsection a. of section 49 of P.L. 1975, c. 291 (C. 40:55D-62) shall be filed with the county planning board."

13. The Planning Board adopted Newark's current Master Plan in September 2012. The Master Plan serves as the regulatory framework for the "City's land use, development, preservation, sustainability and neighborhood revitalization activities through the year 2025." 2012 Newark Master Plan, Page 10. The Master Plan contains several "elements" which take into account the various "systems" or "layers" of the City in order to achieve the enumerated goals for future land use and development throughout the City of Newark.

14. The Mobility Element of the 2012 Master Plan encourages transit-oriented development (TOD) and use of the Urban Transit Hub Program at all the appropriate station locations, with an emphasis on Newark Penn, Broad Street, Orange Street, and Newark Liberty International Airport stations. TOD is commonly understood as dense, walkable, mixed-use development that includes a mix of commercial, residential, office and entertainment centered around or located near a transit station and adds to vibrant, connected communities.

15. The Land Use Element of the 2012 Master Plan recommends the designation of certain blocks located within the Ironbound north of Green Street and west of McWhorter Street, and part of a block north of Hamilton Street and west of Union Street as multi-family Mid-rise Residential ("R-MM"). (2012

Master Plan, Vol II, p. 24). The R-MM designation proposed buildings with a maximum height limitation of eight stories.

16. The R-MM designation was mapped in "a few select locations in the vicinity of transit stations. Its purpose is to promote more intense residential development within walking distance of transit and other service - but in locations not suited for high-rise residential." (2012 Master Plan, Vol II, p. 27).

17. In contrast, the High-rise Multifamily Residential (R-HM) designation is defined as "buildings over eight stories in height" but limited to a maximum height of 20 stories. (p. 28 of Vol II).

18. The R-MM designation is only mapped for a select few locations and deliberately carves out the area around Penn Station in the Ironbound as not suitable to high-rise development. Moreover, these several blocks located east of Penn Station are the only blocks with the R-MM designation throughout the entire Future Land Use Plan included in the 2012 Master Plan. This indicates that this area was carefully considered and deliberately designated as having different use and bulk standards than other Residential or Mixed-Use zones.

19. The Urban Design Element of the 2012 Master Plan describes the height and massing of both mid-rise and high-rise multifamily buildings. It recommends that mid-rise multifamily

buildings not exceed eight stories. (2012 Master Plan, Vol II, p. 65).

20. The Neighborhood Element of the 2012 Master Plan specifically recommends preserving "the physical character and vitality of the Ironbound neighborhood by establishing and enforcing strong design and planning standards." It goes further to recommend controlling "transitions between downtown and the Ironbound to prevent encroachment on the neighborhood." Moreover, it recommends retaining "the neighborhood's historic flavor" "wherever possible." (2012 Master Plan, Vol II, p. 192).

21. High-rise development is currently allowed in the area adjacent to Penn Station within the Downtown Core Redevelopment Plan and Living Downtown Redevelopment Plan. These areas lie directly west of the train station and are not considered part of the Ironbound neighborhood. The redevelopment plans were recommended for adoption in the 2012 Master Plan.

22. The City of Newark adopted the current Zoning & Land Use Ordinance in 2015, which incorporates and is consistent with the 2012 Master Plan.

23. On June 21, 2017, the Council adopted Resolution 17-1311, which referred to the Planning Board the draft Proposed Ordinance amending Zoning and Land Use Regulations for "formal review, report and recommendation" in accordance with N.J.S.A.

40:55D-26 and N.J.S.A. 40:55D-64. A copy of Resolution 17-1131, No. 7R2-G is attached hereto as Exhibit "A".

24. On June 26, 2017, staff from the City's Planning Department appeared before the Planning Board at a public hearing in support of the draft proposed Ordinance. The Planner testified that the proposed MX-3 zone was consistent with the 2012 Master Plan in that the increase in height and density for the area surrounding Newark Penn Station was synonymous with areas designated as "transit-oriented development." However, the Planner failed to acknowledge that the 2012 Master Plan specifically marked out the area around Penn Station in the Ironbound neighborhood as not suitable for high-rise development.

25. At this hearing, over 100 neighboring residents of the proposed MX-3 zone objected to the proposed Ordinance citing lack of public participation, inconsistency with the Master Plan and lack of proper notice. Testimony at this hearing lasted for several hours.

26. At the conclusion of the public hearing, the Planning Board voted to delay making any findings and suggested that the City hold a community meeting to discuss the proposed Ordinance.

27. A meeting for members of the community was scheduled for July 6, 2017 at the Portuguese Sports Club located at 55 Prospect Street in Newark. Members of the Department of Economic

and Housing Development attempted to present information regarding the proposed Ordinance but were unprepared. They did not present any studies regarding actual impacts by the proposed Ordinance on the community. There were no translators provided for the predominantly Portuguese and Spanish speaking residents present during the meeting. No information regarding the proposal was provided to the community because of the disorganization of public officials. Councilman Augusto Amador read a public statement opposing the maximum building height allowed by the proposed Ordinance, which only added to the confusion as to what was the exact maximum building height proposed by the Ordinance.

28. On July 24, 2017, the proposed Ordinance was listed on the Planning Board agenda for a second hearing. Despite the allegation that changes had been made as a result of the failed July 6, 2017 community meeting, no testimony was allowed. Moreover, the Planning Board attorney, Mr. Fredrick P. Niemann, Esq., made factual findings on the record without any additional testimony taken from anyone.

29. On information and belief, the Planning Board recommended the proposed Ordinance for approval and adoption without making a finding on the record as to its consistency and/or inconsistency with the 2012 Master Plan. Moreover, there was no additional testimony from the Planning Department to

support whatever changes were made after the first hearing on June 26, 2017.

30. Based on the provisions of the various elements of the Master Plan set forth in the above paragraphs, Ordinance 17-1437 is inconsistent with the 2012 Master Plan.

31. On September 6, 2017, PLANewark submitted a protest petition to the City Clerk pursuant to N.J.S.A. 40:55D-63 signed by 60 owners of "the area either (1) of the lots or land included in such proposed change, or (2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality."

32. On October 3, 2017, PLANewark submitted supplemental pages containing an additional 36 signatures to attach to its protest petition submitted on September 6, 2017 opposing the proposed Ordinance creating an MX-3 zone.

33. On October 4, 2017, the City Council adopted Ordinance 17-1437 by a vote of 7 to 1. A copy of Ordinance 17-1437, No. 6PsF-C is attached hereto as Exhibit "B".

34. The Council did not acknowledge that the Ordinance was inconsistent with the Master Plan. Moreover, the Council did not state its reasons as to justify why it was making changes to the current Zoning Ordinance barely two (2) years after adoption, and did not set forth in a resolution and recorded in its

minutes its reasons for so acting as required by N.J.S.A.
40:55D-62a.

WHEREFORE, Plaintiffs demand judgment as follows:

- a. Declaring Ordinance 17-1437 inconsistent with the 2012 Master Plan;
- b. Finding that the City Council failed to justify inconsistencies as required by law and thus declaring Ordinance 17-1437 void *ab initio* with no legal effect; and
- c. Such other relief as the Court may deem just and equitable.

COUNT II

**ORDINANCE 17-1437 IS INVALID DUE TO ITS FAILURE TO COMPLY WITH
N.J.S.A. 40:55D-62A.**

35. Plaintiffs repeat and re-state the statements contained in paragraphs 1-34 as if set forth verbatim and at length herein.

36. The MLUL provides at N.J.S.A. 40:55D-62a that zoning ordinances "shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land."

37. Ordinance 17-1437 is not drawn with reasonable consideration to the character of the district, and there is no consideration of the suitability of the height and density allowances in the MX-3 zone.

38. Ordinance 17-1437 contravenes the stated purpose of the Land Use Element of the 2012 Master Plan, more specifically to provisions that are applicable only to the Ironbound area of Newark.

39. Ordinance 17-1437 is contrary to the purposes of the MLUL, inconsistent with sound planning principles, and is arbitrary, capricious and unreasonable.

40. Ordinance 17-1437 is contrary to fundamental principles of the MLUL and zoning and has no discernible planning reason other than to accommodate the economic interests of specific corporate and/or commercial property owners of undeveloped land within the zone.

41. Ordinance 17-1437 is effectively spot zoning effectuated on behalf of certain corporate and/or commercial property owners and is not in accordance with a comprehensive plan. Ordinance 17-1437 provides density, scale, and size of development far in excess of that permitted in the area and far in excess of sustainable growth for the zone.

42. The adoption of Ordinance 17-1437 by the Municipal Council exceeds the discretion of the governing body and the

limitations placed on municipalities in developing a local zoning plan.

WHEREFORE, Plaintiffs demand judgment as follows:

- a. Declaring Ordinance 17-1437 arbitrary, capricious, and unreasonable;
- b. Declaring Ordinance 17-1437 void *ab initio* and of no legal effect;
- c. Such other relief as the Court may deem just and equitable.

COUNT III

ORDINANCE 17-1437 IS INVALID DUE TO FAILURE TO PROVIDE PROPER NOTICE IN ACCORDANCE WITH N.J.S.A. 40:55D-62.1.

43. Plaintiffs the Button Factory Condominium Association, Inc., Aleix Martinez, and Lisa Sanders repeat and restate the statements contained in paragraphs 1-42 as if set forth verbatim and at length herein.

44. N.J.S.A. 40:55D-62.1 requires notice to property owners within 200 feet of property subject to change in a zone classification or boundary. Notices pursuant to this section of the MLUL are required to be given to all owners within 200 feet of the change.

45. N.J.S.A. 40:55D-62.1 also requires that "[n]otice to a condominium association, horizontal property regime, community

trust, or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the boundaries of the district which is subject of the hearing, [] be made in the same manner as to a corporation, in addition to notice to unit owners, co-owners, or homeowners on account of such common elements or areas."

46. Notice pursuant to this section must state the street name, common name or other identifiable landmark and the lot and block number. The notice must be served on the property owner shown on the current tax duplicate, or his agent in charge of the property, or must be mailed by certified mail and regular mail to the property owner at his address shown on the current tax duplicate.

47. Ordinance 17-1437 dramatically alters the intensity of development and permitted uses in the proposed MX-3 zone. Notice to certain property owners within 200 feet was required and not provided.

48. Public notice of hearings to amend an ordinance is jurisdictional and deviations render the action a nullity.

49. The City Clerk's failure to provide notice of the zone change renders Ordinance 17-1437 a nullity.

50. The City Clerk's failure to provide notice of the adjourned hearing is void, invalid, and unsupported by applicable law, rendering Ordinance 17-1437 a nullity.

51. Failure to provide notice of the zone change also contravenes sound judicial precedent, specifically in cases like the one at issue that dramatically alters the character of a neighborhood. "Given the breadth and impact on development of real property within each zone, amended zoning ordinance, which changed density and bulk standards and increased the amount of open space and greenway land requirements for subdivisions within three residential zones, effected a change of classification within residential zones, and therefore, statutory personal notice to all owners of real property in the affected districts was required; the changes effected within residential zones dramatically altered the intensity of residential use within each zone and promised to affect the character of future development in the zones." Robert James Pacilli Homes, L.L.C. v. Township of Woolwich, 394 N.J. Super. 319 (App. Div. 2007).

WHEREFORE, Plaintiffs demand judgment as follows:

- a. Invalidating Ordinance 17-1437 *ab initio* for failure to provide the requisite notice to all relevant property owners pursuant to N.J.S.A. 40:55D-62.1;
- b. Such other relief as the Court may deem just and equitable.

COUNT IV

THE PLANNING BOARD FAILED TO FOLLOW DUE PROCESS BY NOT ALLOWING
THE PUBLIC TO COMMENT AT THE JULY 24, 2017 PUBLIC HEARING

52. Plaintiffs repeat and restate the statements contained in paragraphs 1-51 as if set forth verbatim and at length herein.

53. On July 24, 2017, the proposed Ordinance was listed on the Planning Board agenda for a second public hearing. The matter had been adjourned to allow for changes to be incorporated based on comments from objectors at the July 6, 2017 initial public hearing.

54. According to the attorney for the Planning Board, the Ordinance changed "in response to comments" made at the community meeting held at the Portuguese Sports Club on July 6, 2017.

55. Despite the alleged changes that were introduced for the first time at the July 24, 2017 hearing, the Planning Board improperly denied the public from commenting or giving any testimony.

56. On information and belief, the Planning Board communicated its approval to the City Council though at this time, Plaintiffs have not been able to secure any resolution, statement, or correspondence that the Planning Board sent to the City Council with respect to this matter despite submitting an

OPRA request for same on November 17, 2017. A copy of the OPRA request to the City Clerk regarding communications to Council and the Clerk's response is attached herein as "Exhibit C."


WHEREFORE, Plaintiffs demand judgment as follows:

- a. Invalidating Ordinance 17-1437 *ab initio* for failure of the Planning Board to provide the community with the opportunity to comment on the revised proposed Ordinance;
- b. Such other relief as the Court may deem just and equitable.

Respectfully submitted,

NEW JERSEY APPLESEED
Public Interest Law Center of New
Jersey

Dated: November 27, 2017

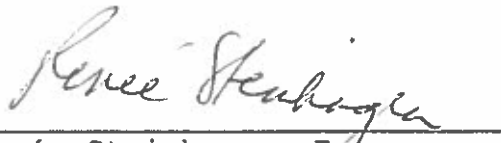

Renée Steinhagen, Esq.
Attorney for Plaintiffs

CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that to the best of my knowledge, the within action is not the subject of any other action nor arbitration proceeding, nor is any other action or arbitration proceeding contemplated and no other party should be joined in this action.

Pursuant to Rule 4:69-4, I hereby certify that Plaintiffs' counsel has started the process of ordering the transcripts of the proceedings before the Newark Central Planning Board and Municipal Council of the City of Newark for the within matter. Plaintiffs' counsel filed an OPRA request for the audiotapes of the relevant hearings on November 13, 2017, which is the first step in the process of getting the hearings transcribed. A copy of the OPRA request and response from the City Clerk is attached herein as Exhibit "D."

Dated: November 27, 2017

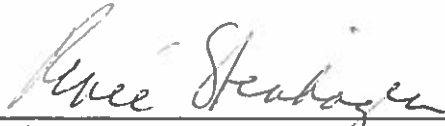


Renée Steinhagen, Esq.
New Jersey Appleseed Public
Interest Law Center of New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Renée Steinhagen, Esq. is hereby designated as trial counsel in this matter.

Dated: November 27, 2017



Renée Steinhagen, Esq.
New Jersey Appleseed Public
Interest Law Center of New Jersey

EXHIBIT "A"

City Council Resolution 17-1131

Resolution of the City of Newark, N.J.

NO. 7R2-6Date of Adoption JUN 21 2017

Title Page

Dept/ Agency: Economic and Housing Development

Action: () Ratifying (X) Authorizing (X) Amending

Type of Service: Resolution Endorsing

Purpose: Resolution referring the draft Proposed Ordinance amending Zoning and Land Use Regulations to the Newark Central Planning Board for formal review, report, and recommendation as required by N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64

Additional Information:

Refers to Planning Board an Ordinance amending Title XLI, Chapters 2, 3 and 4 of the Municipal Code to Establish the MX-3 Zoning Classification

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified by

Corporation Counsel_____
Title

Council Member _____ presents the following Resolution:

FORM 2

Resolution of the City of Newark, N.J.NO. 7R2GDate of Adoption JUN 21 2017

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified by

Robert
Acting Corporation Counsel

Title

Council Member Council of the Whole presents the following Resolution:

WHEREAS, the Municipal Council seeks to expand housing and economic opportunities along the Downtown Core area's major streets and transportation corridors and protect adjacent low-density neighborhoods; and

WHEREAS, the Municipal Council wishes to promote a walkable neighborhood with a vibrant commercial/retail zone; and

WHEREAS, the Municipal Council, pursuant to N.J.S.A. 40:55D-62, may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

WHEREAS, the Municipal Council, through the Department of Economic and Housing Development, and its Outside Counsel, has drafted a Proposed Amendment to the City's Zoning Ordinance which establishes the MX-3 Zoning classification; and

WHEREAS, the MX-3 Zone allows for a blend of high density residential and commercial uses in the same building or district, within a half (1/2) mile from Newark Penn Station which builds upon Newark's strength as a multimodal transportation hub to support the Downtown Core District; and

WHEREAS, pursuant to N.J.S.A. 40:55D-64, prior to the hearing on adoption of a Zoning Ordinance, or any amendments thereto, the Governing Body shall refer any such proposed ordinance or amendment to the Newark Central Planning Board for formal review, report, and recommendation as required by N.J.S.A. 40:55D-26; and

WHEREAS, the Municipal Council, pursuant to N.J.S.A. 40:55D-64, wishes to refer the draft Proposed Ordinance amendment to the Central Planning Board for formal review, report, and recommendation as required by N.J.S.A. 40:55D-26.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. Pursuant to N.J.S.A. 40:55D-64, the Municipal Council hereby refers the draft Proposed Ordinance amending the zoning ordinance, attached hereto as Schedule A, which establishes the MX-3 Zoning Classification, to the Central Planning Board for formal review, report, and recommendation as required by N.J.S.A. 40:55D-26.
2. The Newark Central Planning Board shall submit to the Municipal Council

JUN 21 2017 7R2-062117

FORM 4

7R2-G

- a report within thirty-five (35) days after referral, which includes identification of any provisions which are inconsistent with the Master Plan and recommendations concerning any such inconsistencies, as well as any other matters as it deems appropriate in accordance with N.J.S.A. 40:55D-64 and for specific review by the Central Planning Board and report to the Municipal Council as to whether said amendment is substantially consistent with the Land Use Plan Element and the Housing Plan Element of the Master Plan or designed to effectuate such Plan Elements pursuant to N.J.S.A. 40:55D-62.
3. A copy of this Resolution and the raft Proposed Ordinance Amendment shall be filed with the Office of the City Clerk by the Deputy Mayor/Director of the Department of Economic and Housing Development.
 4. This Resolution shall take effect immediately.

STATEMENT

This Resolution refers a draft Proposed Ordinance amending th City of Newark's Zoning and Land Use Regulations, by establishing the MX-3 Zoning classification, to the Newark Central Planning Board for review and recommendation in accordance with N.J.S.A. 40:55D-64.

CERTIFIED TO BY ME THIS

JUN 26 2017

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RECORD OF COUNCIL VOTE ON FINAL PASSAGE														
Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador, Vice Pres.	✓				Chaneyfield Jenkins				✓	Quintana	✓			
Gonzalez	✓				McCallum, Jr.	✓				Ramos, Jr.				
James	✓				Osborne	✓				Crump, President	✓			
✓ Indicates Vote					AB - Absent					NV - Not Voting				

Adopted at a meeting of the Municipal Council of the City of Newark, N.J.,

Maureen C. Crump

President of the Council

JUN 21 2017

Kenisha

City Clerk

17-1131
City Clerk

EXHIBIT "B"

Ordinance 17-1437

No. 6.F.A....1st Reading 8-2-2017No.Public Hearing OCT 04 2017No. 6.P.S.F.-C...2nd Rdg. and Final Passage

No.Reconsidered

Approved as to Form and Legality on Basis of Facts Set Forth

.....
Acting Corporation CounselCouncil member Council of the whole presents the following Ordinance:**Ordinance**

of the

City of Newark, N.J.Date to Mayor **OCT 05 2017**Date Returned **OCT 4-8-2017**

Date Resubmitted to Council

Date Advertised
1st Reading

Final Reading

Factual contents certified to by

Title

Acting Deputy Mayor/Director EXO

ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK AMENDING THE CITY OF NEWARK ZONING ORDINANCE, TITLE XLI, CHAPTERS 1 THROUGH 5 OF THE MUNICIPAL CODE, TO CREATE AN MX-3 ZONE, WHICH WILL ALLOW A BLEND OF HIGH DENSITY RESIDENTIAL AND COMMERCIAL USES.

WHEREAS, the Municipal Council, pursuant to NJSA 40:55D-62, may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

WHEREAS, the Central Planning Board, at its July 24, 2017 regular meeting, confirmed that the proposed amendment is substantially consistent with the City's land use plan element, in accordance with the provisions of N.J.S.A. 40:55D-62; and

WHEREAS, The Municipal Council of the City of Newark is proposing an Ordinance to amend the Newark Zoning and Land Use Regulations (NZLUR), Title XLI of the Municipal Code. This Ordinance proposes the establishment of a new zone, the MX-3 Mixed Use Residential/Commercial (High Density) District; and

WHEREAS, The Municipal Council is required by State statute (N.J.S.A. 40:55D-26) to refer the proposed legislation to the Planning Board for its review. The purpose of this review is twofold; to determine if the proposed legislation is consistent with the City's Master Plan, and to make recommendations to the Council related to this consistency or any other matter that the Board deems appropriate; and

WHEREAS, the Municipal Council adopted Resolution 7R2-g, on June 21, 2017, referring the proposed MX-3 amendment to the Zoning Ordinance to the Planning Board for their review; and

WHEREAS, the Central Planning Board, City of Newark, New Jersey, after considering the evidence presented by the Board Planner at its regular hearing on June 26, 2017, which included a review of the Ordinance for consistency with the City Master Plan and recommendations for revisions, and after hearing the testimony of members of the public, elected to defer action on the matter until a community meeting could be conducted; and

WHEREAS, on July 6, 2017, a community meeting was conducted in the East Ward in the Ironbound Neighborhood, at which time a presentation was made by Department of Economic and Housing Development staff and attendees were given the opportunity to present comments about the proposal; and

WHEREAS, the Central Planning Board, City of Newark, New Jersey, at its regular hearing on July 24, 2017, heard additional testimony on this matter and made recommendations that are attached in the Memorialized Resolution. findings.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1: Title 41, Chapters 1 through 5 of the City of Newark Municipal are hereby amended as follows:

Bold and underlined is new text not present in the current zoning ordinance.

Strike through is text deleted from the current zoning ordinance.

Chapter 1. Purpose & Intent Introduction

41:1-2. Introduction to Zones/Zoning Districts

MX-3 Mixed-Use 3: Residential & Commercial (High Density)

Mixed Use 3: Residential & Commercial (MX-3) zoning allows for a blend of high density residential and commercial uses in the same building or district, within a half (1/2) mile from Newark Penn Station. It builds upon Newark's strength as a multimodal transportation hub to support the Downtown Core District, expand housing and economic opportunities along the area's major streets and transportation corridors and protect adjacent low-density neighborhoods. It promotes a walkable neighborhood with a vibrant commercial/retail zone. The district's bulk standards allow taller buildings – up to twelve (12) stories high with a minimum lot area per dwelling unit of two hundred (200) square feet.

Commercial development in MX-3 zones allows for ground-floor commercial use with commercial or residential uses above.

MX-3 zoning is applied in areas where there is some existing mix of residential, commercial and industrial uses, such as along Lafayette Street, Union Street and Ferry Street and in under-utilized areas near Newark Penn Station where the predominant use is surface parking, such as along New Jersey Railroad Avenue, Bruen Street, McWhorter Street, Prospect Street and Congress Street.

Learn more about the specific uses that are permitted and prohibited in MX-3 zones in section 41:4-4. Permitted Uses in Mixed-Use & Other Districts.

Learn more about the size and design of buildings permitted in MX-3 zones in section 41:5-2. General Bulk & Design Standards.

Chapter 2. Definitions

Artisans and Craft Workspace shall mean space for skilled craft workers who create things by hand that may be functional or decorative in nature including but not limited to: art, furniture, sculptures, clothing and jewelry. The display and sale of these crafts is permitted as an accessory use.

Brewery, Limited shall mean a commercial facility, which shall not sell or serve food or operate a restaurant, which brews any malt alcoholic beverage in quantities for which it is licensed by the Alcoholic Beverage Commission pursuant to N.J.S.A. 33:1-10. The limited brewery may sell the product at retail to consumers on the licensed premises of the brewery for consumption on the premises but only in connection with tours of the brewery, or for consumption off premises in a quantity of not more than 15.5 fluid gallons per person, and to offer samples for sampling purposes only. "Sampling" shall mean the selling at a nominal charge or the gratuitous offering of an open container not exceeding four ounces of any malt alcoholic beverage produced on the premises. In addition, uses which manufacture 10,000 barrels of beverage or less, but do not meet the one or more requirements of N.J.S.A 33:1-10 and N.J.S.A 33:1-12, shall be considered as limited brewery.

Brewery, Restricted shall mean a commercial establishment, commonly known as Brewpub, that brews any malt alcoholic beverage on site and that meets the requirements of N.J.S.A. 33:1-10 and N.J.S.A 33:1-12. The restricted brewery shall operate in conjunction with a "Sit-Down Restaurant", as defined herein. The restricted brewery may not manufacture more than 10,000 of 31 gallons capacity per year. The restricted brewery may sell, transport and deliver malt alcoholic beverages to wholesalers licensed in accordance with N.J.S.A. 33:1-10.

Shared Kitchen shall mean any establishment that is used as a place of business for the exclusive or primary purpose of utilizing, leasing or renting its commercial kitchen space to individuals, or business entities, for food preparation, temporary extra production capacity, menu planning, training, taste testing, product development, food packaging, food storage or any other food-related purpose; and is licensed as per any applicable local, state or federal law.

Height of Building shall mean ~~measured to the highest point of the roof from the mean elevation of the finished grade from all exterior walls~~ shall mean the vertical distance measured from the mean elevation of the finished grade from all exterior walls to the highest point of the roof. The limitations of height shall not apply to necessary features usually carried above roofs of buildings, but not used for living purposes, such as water tanks, satellite dishes, chimneys, ventilation systems, rooftop mechanical equipment, bulkheads, aerials, church towers or spires, solar arrays, reception antennas, lightning rods and flag poles for the use of the occupants of the building.

Live-Work Unit (Non-Nuisance Producing) shall mean a dwelling unit where the living space is separated from the work space. The work space shall be located on the street level and the living space may be located on the street level (behind the work component) or on any other level of the building above the basement. A minimum of one residential unit in a building with live-work use shall be occupied by the person operating the street-level business.

The work use shall not be incidental to the dwelling unit, non-resident employees may be present on the premises and customers may be served on site.

Live/work space, includes, but is not limited to: customary home occupations; retail sales; photographic studio; studio for arts, crafts, writing, acting, advertising, industrial design, media facility, architecture, interior design, recording studio; theater, film or video production; gallery, auction house, set shop; lighting, engineering, or musical instrument manufacturing; sheet music printing, framing, arts supply, arts restoration, and neighborhood light manufacturing uses.

Makers Space shall mean a building with multiple live-work spaces producing retail goods (NOT services), that may contain a shared retail sales space located on the street level of the building. The building may also contain rooms for common workshop space, containing tools and equipment to be shared among building residents. This common workshop shall not include and must be separate and apart from any residential unit.

In the case of a makers space, each live-work unit may combine the "work" and "live" components into a single combination workspace/dwelling unit.

All final sales of goods must be confined to the first-floor retail area. Customers may only be served in this first-floor space. The first floor area may also contain a workshop space where residents of the building can hold demonstration workshops or host other events of an educational nature.

Chapter 3. Zoning Districts

401:3-1. Establishment of Zoning Districts

For the purpose of limiting and restricting to specified districts, and regulating therein buildings and structures according to their construction and the nature and extent of their use, and the nature and extent of the use of land, and to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use and extent of use of buildings and structures and land, for trade, industry, residence or other purposes excluding municipally owned and operated or municipally operated buildings and related premises used for governmental purposes, the City of Newark is hereby divided into districts, of which there shall be twenty (20) in number, known as:

R-1	Detached Single-Family Residential
R-2	Single- and Two-Family Residential
R-3	One- to Three-Family and Town House Residential
R-4	Low-Rise Multifamily Residential
R-5	Mid-Rise Multifamily Residential
R-6	High-Rise Multifamily Residential
C-1	Neighborhood Commercial
C-2	Community Commercial
C-3	Regional Commercial
I-1	Light Industrial
I-2	Medium Industrial
I-3	Heavy Industrial
MX-1	Mixed Use, Residential/Commercial
MX-2	Mixed Use, Residential/Commercial/Industrial
<u>MX-3</u>	<u>Mixed Use, Residential/Commercial (High Density)</u>
EWR	Airport

No. 6155-CPage 47

Date

EWR-S Airport Support
 PORT Port
 INST Institutional
 PARK Park
 CEM Cemetery
 RDV/SD Redevelopment Zones & Special Districts

Chapter 4: Permitted Uses by District

401:4-4. Permitted Uses in Mixed-Use & Other Districts

Table 4-4: Mixed-Use & Other Districts

P = Permitted - = Not Permitted C = Conditional Use Only

Any use not listed below is also prohibited

	MX-1	MX-2	MX-3	INST	PARK	CEM
Principal Uses						
Single-Family Dwelling	P	P	-	-	-	-
Two-Family Dwelling	P	P	-	-	-	-
Three-Family Dwelling	P	P	-	-	-	-
Town House, Dwelling	P	P	-	P	-	-
Low-Rise Multi-Family Dwellings	P	P	P	P	-	-
Mid-Rise Multi-Family Dwellings	-	-	P	P	-	-
High-Rise Multi-Family Dwellings	-	-	P	-	-	-
Artisans and Craft Workspace	-	P	P	-	-	-
Artist Live/Work Studio (Nuisance Producing)	-	C	-	-	-	-
Active Recreation Park	P	P	P	P	P	-
Animal Boarding or Kennel, Animal Shelter, Pound	-	C	-	-	-	-
Animal Daycare, Animal Grooming	C	C	C	-	-	-
Automobile Repair and Tire Repair	-	P	-	-	-	-
Bar/Lounge, Cigar or Hookah (See Section 401:4-6. Additional Standards)	-	-	-	-	-	-
Bars, Taverns, Lounges	C	C	C	-	-	-
Body Art Studio	-	C	-	-	-	-
Brewery, Limited	-	P	P	-	-	-
Brewery, Restricted	P	P	P	-	-	-
Business, Specialized or Vocational Schools	-	P	P	-	-	-
Cemeteries (See Section 401:4-6. Additional Standards)	-	-	-	-	-	P
Child Care Center/Adult Day Care	P	P	P	P	-	-
Colleges and Universities	-	-	-	P	-	-
Commercial Recreation	-	P	P	-	-	-
Community Centers	P	P	P	P	-	-
Community Gardens	P	P	P	P	P	-
Consignment Store	P	P	P	-	-	-
Consumer Repair Services	P	P	P	-	-	-
Convenience Retail (permitted on ground floor only)	P	P	P	P	-	-
Data Center	-	P	P	-	-	-
Dormitory	-	-	-	P	-	-
Dry Cleaning and Laundry Establishment	C	C	C	C	-	-
Emergency Food Distribution Center, Food Pantry & Soup Kitchen	C	C	-	-	-	-
Finance, Insurance, Real Estate, or Securities Brokerage	P	P	P	-	-	-
Consumer Services	-	-	-	-	-	-
Fish, Meat and Poultry Markets	P	P	P	-	-	-
Fitness Centers	P	P	P	P	-	-
Fresh Food Market	P	P	P	P	-	-
Funeral Home or Mortuary	C	C	-	-	-	-
Government (Non-Municipal) Uses	-	P	P	P	-	-
Homeless Shelter	C	C	-	C	-	-
Hospital or Medical Institution	-	-	-	P	-	-

Table 4-4: Mixed-Use & Other Districts

P = Permitted - = Not Permitted C = Conditional Use Only

Any use not listed below is also prohibited

	MX-1	MX-2	MX-3	INST	PARK	CEM
Principal Uses (continued)						
Hotels (See Section 401:4-6. Additional Standards)	-	-	P	-	-	-
Laundromat	P	P	P	-	-	-

No. G.P.S.E.C.Page - 5 -Date OCT 04 2017

1							
2							
3							
4	Live-Work Unit (Non Nuisance Producing)	-	-	P	-	-	-
5	Makers Space	-	-	P	-	-	-
6	Manufacturing, Light	-	P	P	-	-	-
7	Massage Facilities	C	C	C	-	-	-
8	Medical Clinic or Emergency Care Facility	-	P	P	-	-	-
9	Medical Offices	P	P	P	-	-	-
10	Methadone Maintenance Clinic	-	C	-	-	-	-
11	Municipal Uses	P	P	P	P	-	-
12	Museums	-	-	-	P	-	-
13	Offices	P	P	P	P	-	-
14	Passive Recreation Park	P	P	P	P	P	-
15	Personal Service Establishment	P	P	P	-	-	-
16	Places of Worship	C	C	C	C	-	-
17	Primary and Secondary Schools	C	C	C	C	-	-
18	Private Clubs (See Section 401:4-6. Additional Standards)	C	-	C	-	-	-
19	Recycling Center	-	C	-	-	-	-
20	Resale or Thrift Shop	C	C	C	-	-	-
21	Research and Development	-	P	P	P	-	-
22	Retail Sales, General Consumer Goods	P	P	P	P	-	-
23	Shared Kitchen	P	P	P	P	-	-
24	Sit-Down Restaurant	P	P	P	-	-	-
25	Substance Abuse Treatment Center	-	C	-	-	-	-
26	Supermarket	P	P	P	-	-	-
27	Take-Out Restaurant	P	P	P	-	-	-
28	Theater	-	-	P	P	-	-
29	Veterinary Clinic, Office or Hospital	-	C	C	-	-	-
30	Warehousing, Wholesaling and Distribution	-	P	-	-	-	-
31	Wholesale Bakeries	-	P	-	-	-	-

Table 4-4: Mixed-Use & Other Districts

P = Permitted - = Not Permitted C = Conditional Use Only
Any use not listed below is also prohibited

	MX-1	MX-2	MX-3	INST	PARK	CEM
32						
33						
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No. 6.P.S.F.CPage 6Date OCT 04 2017**401:5-1. Permitted Building Types by Zoning District****Table 5.1. Building Types Permitted by Zone**

P = permitted, see Bulk & Design requirements

Note: This table pertains only to building design requirements and not permitted uses. For permitted uses, see Chapter 4: Permitted Uses by District

BUILDING TYPE	R1	R2	R3	R4	R5	R6	C1	C2	C3	I1	I2	I3	MX-1	MX-2	MX-3	INS-T	EWR-S
RESIDENTIAL																	
One-family	P	P	P	P									P	P			
Two-family		P	P	P									P	P			
Three-family			P	P									P	P			
Townhouse		P	P	P									P	P		P	
Low-rise multifamily & Four-family				P	P	P	P						P	P	P	P	
Mid-rise multifamily					P	P									P	P	
High-rise multifamily						P									P		
COMMERCIAL																	
Ground-floor commercial with commercial or residential above				P	P	P	P	P	P				P	P	P	P	
Detached commercial									P	P	P	P	P	P	P		P
INDUSTRIAL										P	P	P		P			P
CIVIC/INSTITUTIONAL																	
University																P	
Hospital or Medical Institution																P	
Schools (Elementary, Middle, High Schools)		P	P	P	P	P	P	P	P				P			P	
Place of Worship		P	P	P	P	P	P	P	P	P			P	P		P	
Community Center, Stand-Alone Daycare or Preschool in a Non-residential Area, and other Civic Buildings				P	P	P	P	P	P				P	P	P	P	

Table 5.32. General Bulk & Design Standards

	Min Lot Size for Subdivision	Min Lot Width for Subdivision	Max Building Height	Front Yard	Side Yard	Min Rear Yard	Min Lot Area per Dwelling	Max Lot Coverage by Building
Low-rise multifamily	10000 square feet	100 feet	4 stories and 48 feet	Front setback shall match the shorter front setback of the two closest principle buildings on each side of the project site on the same block as the site or 6 feet if no prevailing setback.	5 feet Minimum	30 feet	625 SF/du	66%
For accessory buildings in residential districts see Note 7 in this Chapter			For towers, cupolas, and other elements of architectural character, see Note 1 in this Chapter.	Regarding exceptions for bay windows, balconies, stoops, porches, and other elements of architectural character, see Note 2 in this Chapter.	For party walls and other exceptions, see Note 5 in this Chapter.			
In C1 and MX-3 Zone; for low-rise multifamily with active ground floor, use Ground-floor commercial with commercial or residential above standards.				For through lots, see Note 3 in this Chapter.				
				For corner lots, see Note 4 in this Chapter.				
Mid-rise multifamily	10000 square feet	100 feet	8 stories and 96 feet	Front setback shall match the shorter front setback of the two closest principle buildings on each side of the project site on the same block as the site or 6 feet if no prevailing setback.	5 feet minimum	30 feet	350 SF/du	60%
For accessory buildings in residential districts see Note 7 in this Chapter			For towers, cupolas, and other elements of architectural character, see Note 1 in this Chapter.	Regarding exceptions for bay windows, balconies, stoops, porches, and other elements of architectural character, see Note 2 in this Chapter.	For party walls and other exceptions, see Note 5 in this Chapter.			
In MX-3 Zone; for mid-rise multifamily with active ground floor, use Ground-floor commercial with commercial			For properties bordering on Ferry Street, no portion of any building within 100 feet of Ferry Street shall exceed 5 stories or 60 feet. All	For through lots, see Note 3 in this Chapter.				
				For corner lots, see Note 4 in this Chapter.				

No. 6PSF-CPage -7-

Date

1 2 3 4 5 6 7 8 9 10 11	or 3 residential above standards.		dwelling units fronting on Ferry Street shall be located above ground floor retail, office or service use.					
12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29
30	31	32	33	34	35	36	37	38
39	40	41	42	43	44	45	46	47
48	49	50	51	52	53	54	55	56
57	58	59	60	61	62	63	64	65
66	67	68	69	70	71	72	73	74
75	76	77	78	79	80	81	82	83
84	85	86	87	88	89	90	91	92
93	94	95	96	97	98	99	100	101

Table 5-32. General Bulk & Design Standards

	Max Impervious (Paved) Yard Area	Min Building Transparency	Orientation of primary entrance	Active Ground Floor Requirements
Low-rise multifamily	Front Yard: 55% Rear Yard: 30%	Primary Front Façade: 50% Secondary Street-Facing Side Façade & Rear Façades: 35% Non-Street-Facing Façades: 20% or the maximum allowed by construction code, whichever is greater. All transparent glazing areas on door panels count towards this requirement, but door panels themselves do not count towards this requirement. If there is retail, office or personal services on the ground floor between zero (0) and 14 feet, the front façade must have 65% transparency.	Primary street-facing façade must include primary entrance. All units must be accessible from front or side façade. Rear primary entrances are prohibited. If there is one or more units of retail, office, or personal services on the ground floor between zero (0) and 14 feet, each unit must have its own primary entrance on the street-facing façade.	If there is one or more units of retail, office or personal services on the ground floor, the ground floor shall have a 14 feet max min. floor-to-floor height.
Mid-rise multifamily	Front Yard: 55% Rear Yard: 30%	Primary Front Façade: 50% Secondary Street-Facing Side Façade & Rear Façades: 35% Non-Street-Facing Façades: 20% or the maximum allowed by construction code, whichever is greater. All transparent glazing areas on door panels count towards this requirement, but door panels themselves do not count towards this requirement. If there is retail, office or personal services on the ground floor between zero (0) and 14 feet, the front façade must have 65% transparency.	Primary street-facing façade must include primary entrance. All units must be accessible from front or side façade. Rear primary entrances are prohibited. If there is one or more units of retail, office, or personal services on the ground floor between zero (0) and 14 feet, each unit must have its own primary entrance on the street-facing façade.	If there is one or more units of retail, office or personal services on the ground floor, the ground floor shall have a 14 feet max min. floor-to-floor height.

Table 5-32. General Bulk & Design Standards

	Min Lot Size for Subdivision	Min Lot Width for Subdivision	Max Building Height	Front Yard	Side Yard	Min Rear Yard	Min Lot Area per Dwelling	Max Lot Coverage by Building
High-rise multifamily	10000 square feet	100 feet	10 stories and 120 feet An additional 1 story per 12 feet of height shall be permitted for each additional 1,000 SF of lot area up to 20,000 SF, for a maximum height of 20 stories and 243 feet. A 10-foot setback is required after 8 stories along all front street facing facades. For properties bordering on Ferry Street, no portion of any building within 100 feet of Ferry Street shall exceed 6 stories or 60 feet. All	Front setback shall match the shorter front setback of the two closest principle buildings on each side of the project site on the same block as the site or 8 feet if no prevailing setback. A 10-foot front setback is required along McWhorter Street and Union Street. Regarding exceptions for bay windows, balconies, stoops, porches, and other elements of architectural character, see Note 2 in this Chapter. For through lots, see Note 3 in this Chapter. For corner lots, see Note 4 in this Chapter.	10 feet minimum	30 feet	300 SF/du	60%

No. 615FCPage 8Date OCT 04 2017

1									
2									
3				<u>dwellings units</u>					
4				<u>fronting on</u>					
5				<u>Ferry Street</u>					
6				<u>shall be</u>					
7				<u>located above</u>					
8				<u>ground floor</u>					
9				<u>retail, office</u>					
10				<u>or service</u>					
				<u>use.</u>					
1	Ground-floor commercial	3,500 square feet	35 feet	In C1 district: 4 stories and 48 feet	Minimum: 0 feet Maximum: 5 feet	<u>0 feet minimum and maximum</u>	Abutting a residential district or residential use: 25 feet	In C1, <u>MX-1, and MX-2</u> districts: 580 SF/du	80%
2	With commercial or residential above	In MX-3: 10,000 square feet	In MX-3: 100 feet	In C2 district: <u>minimum 2 stories and maximum 5 stories and 60 feet</u>	<u>In MX-3: Front setback shall match the shorter front setback of the two closest principal buildings on each side of the project site on the same block as the site or 5 feet if no prevailing setback. A 10-foot front setback is required along McWhorter Street and Union Street.</u>	<u>In MX-3: 5 feet minimum for buildings up to 8 stories and 10 feet minimum for buildings more than 8 stories tall.</u>	Abutting a non-residential district: 20 feet	In C2 district: 340 SF/du	<u>In MX-3 zone: 85%</u>
3	For ground-floor commercial with commercial or residential above in residential districts, see the following standards:			In C3 and INST districts: 8 stories and 96 feet				In C3 and INST districts: 310 SF/du	
4	In R-4 – low-rise multifamily.			In MX-1 & and MX-2 districts: 4 stories and 48 feet.	Regarding exceptions for bay windows, balconies, stoops, porches, and other elements of architectural character, see Note 2 in this Chapter.			<u>In MX-3 zone: 200 SF/du; 150 SF/du if 50% of the total units are 1 bedroom and/or studio units; 130 SF/du if 75% of the total units are 1 bedroom and/or studio units.</u>	
5	In R-5 – mid-rise multifamily.			<u>In MX-3 districts: 12 stories and 145 feet. A 10-foot setback is required after 8 stories along all front street facing facades. For properties bordering on Ferry Street, no portion of any building within 100 feet of Ferry Street shall exceed 5 stories or 60 feet. All dwellings units fronting on Ferry Street shall be located above ground floor retail, office or service use.</u>	For through lots, see Note 3 in this Chapter.				
6	In R-6 – high-rise multifamily.				For corner lots, see Note 4 in this Chapter.				

No. 685 F-CPage 9Date OCT. 04. 2017

	Max Impervious (Paved) Yard Area	Min Building Transparency	Orientation of primary entrance	Active Ground Floor Requirements
High-rise multifamily	Front Yard: 55% Rear Yard: 30%	Primary Front Façade: 50% <u>40% in MX-3</u> Secondary Street-Facing Side Façade & Rear Façades: 35% Non-Street-Facing Façades: 20% or the maximum allowed by construction code, whichever is greater. All transparent glazing areas on door panels count towards this requirement, but door panels themselves do not count towards this requirement. If there is retail, office or personal services on the ground floor between zero (0) and 14 feet, the front façade must have 65% transparency.	Primary street-facing façade must include primary entrance. All units must be accessible from front or side façade. Rear primary entrances are prohibited. If there is one or more units of retail, office, or personal services on the ground floor between zero (0) and 14 feet, each unit must have its own primary entrance on the street-facing façade.	If there is one or more units of retail, office or personal services on the ground floor, the ground floor shall have a 14 feet max min. floor-to-floor height.
Ground-floor commercial with commercial or residential above	Front Yard: n/a Rear Yard: 50% <u>In MX-3 zone: Front Yard: 65% Rear Yard: 30%</u>	Ground-level street-facing façade below 14 feet in height: 65% Ground-level windows must allow views of indoor non-residential space or product display areas. Corner uses having frontage on two streets shall meet this requirement for each of the street frontages. Primary Front Façade (excluding ground-level façade): <u>40% in MX-3 and 50% in all other zoning districts</u> Street-Facing Side & Rear Façades: 35% Non-Street-Facing Walls: 15% All transparent glazing areas on door panels count towards this requirement, but door panels themselves do not count towards this requirement. Reflective, mirrored, smoked and dark tinted glass is prohibited on façades facing a public street.	Primary street-facing façade must include primary entrance. Buildings may have more than one principal façade and/or entry. Entries to non-residential uses shall have their own individual entrance from a sidewalk or walkway; mall-style interior retail entrances are prohibited.	Ground floor shall have a 14 feet min floor-to-floor height. <u>In MX-3 zone: Active ground floor with active streetfront design required for all building frontages.</u>

Note: In MX-3 additional sustainability standards shall apply, see section 41:5-3.

41:5-3: Additional sustainability standards for MX-3.

Following standards shall apply for building over 8 stories high.

- Provide open spaces (greens, squares, plazas, courts and pocket parks/playgrounds) equal to 10% of total lot area or 10% of the ground-floor floor area whichever is greater on the site, with public access directly from the sidewalk at ground level or from the public right of way. Open space must meet landscaping and other design requirements as listed in this ordinance.
- Provide green roof equal to 50% or more of the total usable roof area including both principal and accessory structures.
- Provide a living wall or green wall equal to 300 Sq. Ft. or more.
- Install appropriate gray water recycling system so that onsite gray water is reused for landscaping maintenance and other non-potable systems.
- Incorporate additional on-site stormwater management measures and Low Impact Development (LID) strategies, that reduces stormwater flow generated from proposed development, including all proposed graded and fill areas, by 50% or greater. The plans must provide calculations showing stormwater runoff rates of development with the new stormwater management measures and without them.
- All new electrical or electronic appliances provided by the developer, owner or management company shall meet Energy Star compliant requirements.
- Provide One (1) bicycle parking space for every five (5) residential units.
- Provide one (1) electric vehicle charging station for every ten (10) parking spaces.

No. 615Page 10Date OCT 04 2017**List of Attached Exhibits**

- 1) Exhibit A – Map 1: Rezoning Boundary
- 2) Exhibit B – Map 2: Existing Zoning
- 3) Exhibit C – Map 3: Proposed Zoning
- 4) Exhibit D – Map 4: Existing Land Uses (Newark Master Plan)
- 5) Exhibit E – Map 5: Proposed Land Uses

Section 2:

Severability: If any Section, Subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3.

Repealer: All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.

Section 4.

This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends the City of Newark's Zoning Ordinance, Title XLI, Chapters 1 through 5, to create an MX-3 Zone, which will allow a blend of high density residential and commercial uses.

CERTIFIED BY ME THIS

OCT 11 2017

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE					RECORD OF COUNCIL VOTE FOR RECONSIDERATION				
Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador <i>Vice President</i>		<input checked="" type="checkbox"/>			Osborne	<input checked="" type="checkbox"/>			
Gonzalez	<input checked="" type="checkbox"/>				Quintana	<input checked="" type="checkbox"/>			
James	<input checked="" type="checkbox"/>				Ramos, Jr.	<input checked="" type="checkbox"/>			
Chaneyfield Jenkins				<input checked="" type="checkbox"/>	Crump <i>President</i>	<input checked="" type="checkbox"/>			
McCallum, Jr.	<input checked="" type="checkbox"/>				McCallum, Jr.				

✓ - Indicates Vote

AB - Absent

NV - Not Voting

Adopted on first reading at a meeting of the Council of the City of Newark, N.J. on

AUG 02 2017

Adopted on second and final reading after hearing on

OCT 04 2017

Approved

Rejected By

Mayor

Council President

City Clerk

This Ordinance when adopted must remain in the custody of the City Clerk. Certified copies are available.

17-1437

EXHIBIT "C"

OPRA Request and Response from City Clerk re Planning Board
Communications to Council



**City of Newark
NEW JERSEY
GOVERNMENT RECORDS REQUEST FORM
(GENERAL FORM)**

OPRA# EHD-17-0329

Office of the City Clerk
Kenneth Louis, City Clerk
920 Broad St.
City Hall, Room, 415A
Newark, New Jersey 07102
Telephone: (973) 424-4116
Facsimile: (973) 733-4893

Important Notice

The reverse side of this form contains important information related to your rights concerning government records. Please read it carefully. OPRA requests sent via email are not accepted. Please submit form via facsimile at (973) 733-4893

Requestor Information – Please Print legibly

First Name Renee MI _____ Last Name Steinhagen
 Company NJ Appleseed Public Interest Law Center
 Mailing Address 50 Park place, Suite 1025
 City Newark State NJ Zip 07102 Email Steinhagen-Pilc@yahoo.com
Zeminzhong923@yahoo.com
 Business Hours Telephone: Area Code 973 Number 643-4104 Extension _____
 Fax Telephone: _____
 Preferred Delivery: Pick Up ☒ US Mail _____ On Site Inspect _____
 Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
 Signature Renee Steinhagen Zeminzhong Date 11-17-17

Payment Information

Maximum Authorization Cost \$ _____
 Select Payment Method
 Cash ☐ Check ☐ Money Order ☐
 Fees: Per Page – @ \$0.05
 Business Paper
 Per Page – @ \$0.07
 Legal Paper
 Delivery: Delivery / postage fees additional depending upon delivery type.
 Extras: Extraordinary service fees dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

Communications (i.e., E-mails, correspondence, telephone records)
 between Central Planning Board and City Council / City Clerk's office
 between July 24, 2017 and October 4, 2017.
 (Regarding Planning Board's public hearing (on July 24, 2017) and the planning
 Board's decision and/or recommendations on MX3 rezoning.)

AGENCY USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extras Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
 Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
 Denied - Closed _____
 Filled - Closed _____
 Partial - Closed _____

AGENCY USE ONLY**Tracking Information**

Application # _____ Total _____
 Rec'd Date _____ Deposit ☒ _____
 Ready Date _____ Balance Due _____
 Total Pages _____ Balance Paid _____
 Records Provided ☒

OPRA Representative Signature _____

Date _____



OFFICE OF THE CITY CLERK
NEWARK, NEW JERSEY 07102

KENNETH LOUIS
CITY CLERK
KATHLEEN MARCHETTI
DEPUTY CITY CLERK

November 17, 2017

Ms. Renee Steinhagen
NJ Appleseed Public Interest Law Center
50 Park Place – Suite 1025
Newark, New Jersey 07102

RE: Open Public Records Application # BA-17-0022 aka EHD-17-0329
MX3 rezoning – July 24, 2017 – October 4, 2017

Dear Ms. Steinhagen:

The Office of the City Clerk is in receipt of your Open Public Records request regarding obtaining copies of government records entailing communications between the Central Planning Board, City Council, and Clerk's Office regarding MX3 rezoning.

Your request has been forwarded to the Department of Administration, Office of Information Technology, and Economic and Housing Development, to begin a search for relevant records in accordance to your request. The anticipated date for a response is December 11th, 2017.

If you have any questions regarding your request, please do not hesitate to contact our office and ensure that you provide the OPRA file number referenced above.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Louis", written over a horizontal line.

City Clerk

KL:amg

EXHIBIT "D"

OPRA Request and Response from City Clerk re Audio Recordings of
Hearings



**City of Newark
NEW JERSEY
GOVERNMENT RECORDS REQUEST FORM
(GENERAL FORM)**

W-17-0102
OPRA# EHD-17-0319
Office of the City Clerk
Kenneth Louis, City Clerk
920 Broad St.
City Hall, Room, 415A
Newark, New Jersey 07102
Telephone: (973) 424-4116
Facsimile: (973) 733-4893

Important Notice

The reverse side of this form contains important information related to your rights concerning government records. Please read it carefully. OPRA requests sent via email are not accepted. Please submit form via facsimile at (973) 733-4893

Requestor Information - Please Print legibly

First Name Renee Steinhagen MI MI Last Name Steinhagen
 Company NJ Appleseed Public Interest Law Center
 Mailing Address 50 Park Place, #1025
 City Newark State NJ Zip 07102 Email Steinhagen-PILC@Yahoo!
 Business Hours Telephone: Area Code 973 Number 643-4104 Extension _____
 Fax Telephone: _____
 Preferred Delivery: Pick Up ☒ US Mail _____ On Site Inspect _____
 Circle One: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any
 indictable offense under the laws of New Jersey, any other state, or the United States.
 Signature Renee Steinhagen Date 11-13-17

Payment Information

Maximum Authorization Cost \$ _____
 Select Payment Method
 Cash _____ Check _____ Money Order _____
 Fees: Per Page - @ \$0.05
 Business Paper
 Per Page - @ \$0.07
 Legal Paper
 Delivery: Delivery / postage fees
 additional depending upon
 delivery type.
 Extras: Extraordinary service fees
 dependent upon request.

Record Request Information: To expedite the request, be as specific as possible in describing the records being requested. Also, please include the type of access requested (copying or inspection), and if data, the medium requested.

City Council Hearing on October 4, 2017
Central Planning Board hearing on July 24, 2017
Any letters, correspondence

2017 NOV 13 AM 10:32

AGENCY USE ONLY

Est. Document Cost _____
 Est. Delivery Cost _____
 Est. Extras Cost _____
 Total Est. Cost _____
 Deposit Amount _____
 Estimated Balance _____

Deposit Date _____

AGENCY USE ONLY

Disposition Notes
 Custodian: If any part of request cannot be
 delivered in seven business days,
 detail reasons here.

In Progress - Open _____
 Denied - Closed _____
 Filled - Closed _____
 Partial - Closed _____

AGENCY USE ONLY

Tracking Information		Final Cost	
Application #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			
OPRA Representative Signature _____		Date _____	



OFFICE OF THE CITY CLERK
NEWARK, NEW JERSEY 07102

KENNETH LOUIS
CITY CLERK
KATHLEEN MARCHETTI
DEPUTY CITY CLERK

November 13, 2017

Ms. Renee Steinhagen
NJ Appleseed Law Center
50 Park Place, #1025
Newark, NJ 07102

Re: Open Public Record Application #CC-17-0102
Council hearing 10/4/17

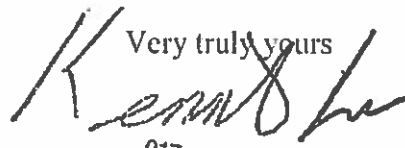
Dear Ms. Steinhagen:

Please be advised that the Office of the City Clerk is in receipt of your Open Public Records Applications regarding the above subject matter.

We will begin a relevant search for all records pertaining to your request, and you should anticipate a response on or before December 5, 2017.

In addition, we are returning your company's check. No payment is needed at this time.

If you wish to discuss your request further, you may contact the Office of the City Clerk at 973-424-4116 or 4117.

Very truly yours

017
City Clerk

KL/cw



OFFICE OF THE CITY CLERK
NEWARK, NEW JERSEY 07102

KENNETH LOUIS
CITY CLERK
KATHLEEN MARCHETTI
DEPUTY CITY CLERK

November 14, 2017

Ms. Renee Steinhagen
NJ Appleseed Public Center
50 Park Place, # 1025
Newark, NJ 07102

Re: Open Public Record Application #EHD-17-0319
Central Planning Bd, 7/24/2017

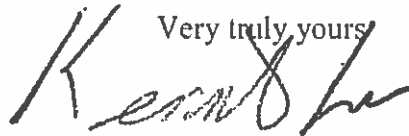
Dear Ms. Steinhagen:

Please be advised that the Office of the City Clerk is in receipt of your Open Public Records Applications regarding the above subject matter.

Your request has been forwarded the Department of Economic and Housing Development to begin a relevant search for all records pertaining to your request.


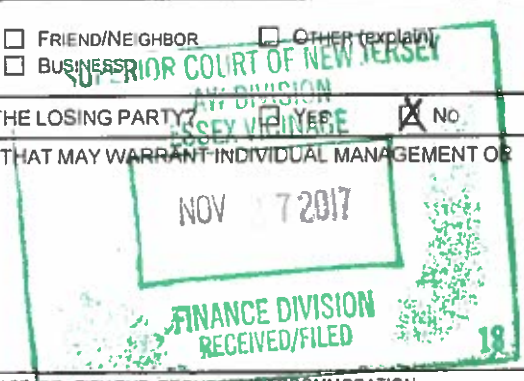

We anticipate a response on or before December 5, 2017.

If you wish to discuss your request further, you may contact the Office of the City Clerk at 973-424-4116 or 4117.

Very truly yours,

017
City Clerk

KL/cw

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY	
			PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
			CHG/CK NO.	
			AMOUNT:	
			OVERPAYMENT:	
		BATCH NUMBER:		
ATTORNEY / PRO SE NAME <i>Renée Steinhagen, Esq.</i>		TELEPHONE NUMBER <i>973.735.0523</i>		COUNTY OF VENUE <i>Essex</i>
FIRM NAME (if applicable) <i>New Jersey Appleseed Public Interest Law Center</i>		DOCKET NUMBER (when available)		
OFFICE ADDRESS <i>50 Park Place, Suite 1025 Newark, NJ 07102</i>		DOCUMENT TYPE <i>Complaint - Prerogative Writ</i>		
		JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
NAME OF PARTY (e.g., John Doe, Plaintiff) <i>PLANewark, Plaintiff</i>		CAPTION <i>PLANewark Button Factory Condo Association, Inc., Alein Martinez, Madeline Ruiz, Lisa Sanders v. Municipal Council of the City of Newark, et al.</i>		
CASE TYPE NUMBER (See reverse side for listing) <i>701</i>	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS		
		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> BUSINESS <input type="checkbox"/> FAMILIAL		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
<div style="text-align: right;">  </div>				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: <i>Renée Steinhagen, Esq.</i>				